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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 10, 1998

BY HAND DELIVERY

Magalie Roman Salas, Esquire
Secretary
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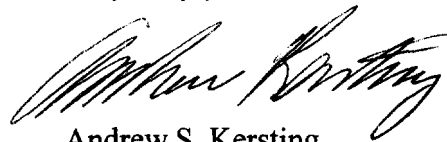
Re: Advanced Television Systems and Their Impact
Upon the Existing Television Broadcast Service
MM Docket No. 87-268

Dear Ms. Salas:

Transmitted herewith on behalf of Fant Broadcast Development, L.L.C., are an original and 11 copies of its "Reply to Opposition to Petition for Reconsideration," which is being filed in connection with the Commission's *Report and Order* in MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24 (released February 23, 1998), in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,



Andrew S. Kersting
Counsel for
Fant Broadcast Development, L.L.C.

Enclosures

cc (w/ encl.): Certificate of Service (by hand & first-class mail)

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BEFORE THE
Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the Existing) MM Docket No. 87-268
Television Broadcast Service)

To: The Commission

**REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION**

Fant Broadcast Development, L.L.C. ("Fant"), by its counsel, hereby replies to the "Opposition to Petition for Reconsideration," filed May 26, 1998 ("Opposition"), in the above-captioned proceeding by Independence Television Company ("ITC").¹ In reply, the following is stated:

In its Opposition, ITC opposes Fant's April 20, 1998, Petition for Reconsideration ("Petition") on the following two grounds: (1) ITC has not consented to the proposed substitution of DTV Channel 50 for Channel 49 at Louisville; and (2) Fant's petition for rulemaking requesting the allotment of NTSC Channel 49 at New Albany, Indiana, was dismissed by the Commission's staff because it does not comply with the Commission's minimum distance separation requirements.²

¹ ITC is the licensee of Station WDRB-TV, Louisville, Kentucky, which has been allotted DTV Channel 49 in this proceeding. See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, FCC 98-24 (released February 23, 1998) ("MO&O"), Appendix B-19.

² On July 23, 1996, Fant filed a petition for rulemaking seeking the allotment of Channel 49 to New Albany, Indiana, as that community's first local television service. Fant filed a construction permit application for the Channel 49 facility on the same date. Fant's rulemaking (continued...)

Opposition, pp. 1-2. Nevertheless, for the reasons stated herein, Fant's Petition should be granted because the proposed substitution of DTV Channel 50 for Channel 49 at Louisville will not result in excessive interference to either Station WDRB-TV's digital or NTSC facilities, and the mere fact that ITC would prefer to remain on DTV Channel 49 is outweighed by the substantial public interest benefits that would result from Fant's proposal.

With respect to ITC's allegations concerning the short-spaced nature of Fant's rulemaking petition requesting the allotment of Channel 49 to New Albany, these matters have been adequately addressed in Fant's December 4, 1996, Petition for Reconsideration, which currently remains pending. Fant respectfully submits that, due to the *de minimus* nature of the short-spacings,³ the

²(...continued)

petition was dismissed by the Chief, Allocations Branch, by letter dated November 4, 1996, because the reference coordinates of New Albany are short-spaced to the licensed transmitter sites of Stations WDRB-TV, Channel 41, Louisville, Kentucky, and WIPB(TV), Channel 49, Muncie, Indiana. See Letter dated November 4, 1996, from John A. Karousos, Chief, Allocations Branch, to Vincent Curtis, Counsel for Fant. Fant filed a petition for reconsideration of the dismissal of its rulemaking petition on December 4, 1996, which currently remains pending.

³ As ITC notes, if the Commission were to use the coordinates of Fant's proposed transmitter site, rather than the center-city reference coordinates of New Albany in determining the requisite distance separations (as Fant requested in both its rulemaking petition and December 4, 1996, Petition for Reconsideration), the short-spacings would be well within the range of what the Commission previously has approved. See Opposition, p. 2, n.3. Moreover, although ITC claims that Fant's reconsideration petition in the rulemaking proceeding was silent with respect to the short-spacing to Station WDRB-TV, Channel 41, Louisville, due to the N±8 channel relationship between WDRB-TV and the proposed Channel 49 facility at New Albany, any interference that might result between the two stations would be to the higher channel station which, in this case, is the New Albany station, and not WDRB-TV. See attached Engineering Statement of Pete E. M. Warren, III. Therefore, despite ITC's allegations to the contrary, Fant's proposal would not cause any interference or loss of service to WDRB-TV's existing NTSC facility.

Commission's focus should be on whether Fant's reconsideration proposal in this proceeding would better serve the public interest than maintaining the DTV Channel 49 allotment at Louisville.

As demonstrated in Fant's Petition, the proposed substitution of DTV Channel 50 for Channel 49 at Louisville would not result in excessive interference to any digital or NTSC stations, and would not have any effect upon WDRB-TV's digital operation. In the context of discussing the displacement of existing low power television stations by full service DTV operations in its *MO&O*, the Commission stated that alternative channels would be considered for full service stations "if they would provide the same replication as a station's existing DTV channel and were *within 3 channels above or below that channel*." *Id.* at ¶107, n.75 (emphasis added). With respect to the latter criterion, the Commission stated: "[W]e believe that a change within 3 channels would not affect any DTV technical plans or operations that a station might already have in place." *Id.* In this case, the substitution of DTV Channel 50 would result in Station WDRB-TV receiving a 99.7% replication match, and would cause only negligible interference (less than 0.02%) to any digital or NTSC station.⁴ Therefore, because Fant's proposal would (i) not result in excessive interference to any other station, (ii) provide WDRB-TV with essentially the same DTV/NTSC replication match as the station's existing DTV channel, and (iii) change its DTV allotment by only one channel, grant of Fant's Petition would have no material effect upon WDRB-TV's technical plans or operation of its DTV facility. Moreover, by changing the DTV allotment by only one channel, WDRB-TV would remain within the core digital spectrum.⁵ Indeed, other than noting that it has not consented to Fant's

⁴ See Fant's Petition, p. 5 and attached Engineering Statement.

⁵ The FCC has established a DTV "core spectrum" which consists of channels 2-51. See *MO&O* at ¶42.

reconsideration proposal, ITC has failed to offer any justification -- technical or otherwise -- which even suggests that WDRB-TV's DTV allotment should not be changed from DTV Channel 49 to Channel 50.

Furthermore, as also demonstrated in Fant's Petition, a grant of Fant's proposal would provide substantial public interest benefits. The allotment of Channel 49 would provide the community of New Albany, Indiana, with its first local television service, which will promote the objectives of Section 307(b) of the Communications Act, as amended, of providing a fair, efficient and equitable distribution of television broadcast stations among the various states and communities. 47 U.S.C. §307(b). See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States"); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression"). In addition, the proposed allotment will promote the second television allotment priority established in the *Sixth Report and Order in Amendment of Section 3.606 of the Commission's Rules and Regulations*, 41 FCC 148, 167 (1952), of providing each community with at least one television broadcast station. Further, the allotment of Channel 49 at New Albany would promote the emergence and development of new networks by providing an additional broadcast station with which to affiliate in the Louisville market.

ITC acknowledges the significant nature of the public interest benefits that would result from Fant's proposal. See *Opposition*, p. 3. Nevertheless, ITC contends that Fant's proposal would result in the elimination of service for certain of its viewers, apparently because of the short-spacing between the WDRB-TV's licensed transmitter site and the New Albany reference coordinates. See *Opposition*, pp. 3-4. As stated above, however, the short-spacing between the proposed Channel 49

allotment at New Albany and WDRB-TV would not result in interference to WDRB-TV. Due to the $N \pm 8$ channel relationship between WDRB-TV's NTSC facility and the proposed Channel 49 allotment at New Albany, any interference between the two stations would be received by the New Albany station and not WDRB-TV.⁶ See attached Engineering Statement.

WHEREFORE, in light of the foregoing, Fant Broadcast Development, L.L.C. respectfully requests that the Commission GRANT reconsideration of its *MO&O* to the extent indicated herein by substituting DTV Channel 50 for Channel 49 at Louisville, Kentucky.

Respectfully submitted,

FANT BROADCAST DEVELOPMENT, L.L.C.

By: 

Vincent J. Curtis, Jr.

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Its Counsel

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June 10, 1998

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⁶ In this regard, it is significant that ITC has not supported its Opposition with any form of engineering analysis demonstrating that the proposed Channel 49 allotment at New Albany would, in fact, cause interference to WDRB-TV, Channel 41, Louisville.

Engineering Statement

New Albany, IN

by WES, Inc. Broadcast Consultants

As is demonstrated by the attached NTSC spacing study, the Fant proposed transmitter site as Fant requested in its rule making petition and petition for reconsideration is not short-spaced to WDRB-TV, Channel 41. Even if the Commission were to consider the center of the city reference coordinates for New Albany, there would be no interference from a full power station in New Albany to Louisville 41, WDRB. Rather, there would be a negligible interference to the channel 49, as the +/- 8 problem is almost exclusively to the upper channel rather than to the lower channel.



Pete E. M. Warren, III

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**Engineering Exhibit
New Albany, IN
NTSC Spacing Study
by WES, Inc. Broadcast Consultants**

***** TV CHANNEL SPACING STUDY *****

Job title: New Albany
Channel: 49
Database file name: tv980501.edx

Latitude: 38 0 49
Longitude: 86 10 6

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
56o	WDKYTV	3169	DANVILLE	KY	2	L	100.4	133.2	95.7	37.5
56o	WDKYTV	3170	DANVILLE	KY	2	A	100.4	133.2	95.7	37.5
34-	WGRB	3470	CAMPBELLSVILLE	KY	2	L	140.9	120.7	119.9	.8
41+	WDRB	3485	LOUISVILLE	KY	2	L	36.6	46.6	31.4	15.2
49o	WIPB	3498	MUNCIE	IN	1	L	15.7	248.0	248.6	-.6
48o	ALIOTM	3843	OWENSBORO	KY	2		252.1	87.5	87.7	-.2
48o	NEW	3857	OWENSBORO	KY	2	A	271.0	104.8	87.7	17.1
48o	NEW	3858	OWENSBORO	KY	2	A	271.0	104.8	87.7	17.1
49o	WDKA	4076	PADUCAH	KY	2	C	255.1	253.9	248.6	5.3

***** End of channel 49 study *****

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 10th day of June, 1998, copies of the foregoing "Reply to Opposition to Petition for Reconsideration" were hand delivered or mailed first-class, postage pre-paid, to the following:

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